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No. 10-57

IN THE

Supreme Court of the United States

BRUCE MARKS AND MARKS, LLC
D/B/A MARKS & SOKOLOV, LLC,

Petitioners,

v.

ALFA GROUP A/K/A CROWN FINANCE FOUNDATION,
ALTIMO HOLDINGS & INVESTMENT LTD.,
AND FINANCIAL DYNAMICS LTD.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION

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Question Presented

Does the Due Process Clause of the 14th Amendment to the U.S. Constitution support jurisdiction over foreign defendants in a defamation action when the only connections to the forum are that the forum is one of the places in which plaintiffs are known to reside and that residents of the forum can access the allegedly defamatory statements on the Internet?

Rule 29.6 Statement

Pursuant to Supreme Court Rule 29.6, Respondents submit the following corporate information:

Respondent Crown Finance Foundation, incorrectly identified for docketing purposes as "Alfa Group", does not have a parent corporation and there is no publicly held company that owns 10% or more of its stock.

Respondent Altimo Holdings & Investment Ltd. has the following parent corporations: CTF Holdings Limited and Crown Finance Foundation. No publicly held company directly owns 10% or more of its stock.

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Introduction

Petitioners ask this Court to decide whether, "regardless" of other facts, the Due Process Clause of the 14th Amendment supports specific jurisdiction over a foreign defendant based solely on its having committed an "intentional tort[]" (alleged defamation) that "individually target[s] forum residents with the intent of harming them within the forum." (Petitioners' Petition for Writ of Certiorari (the "Petition" or "Pet.") at ii.) Petitioners' use of the phrase "individually target" appears to signify nothing in a defamation case: by definition, defamation "targets" the person defamed. Thus, the Petition effectively asks the Court to impose a rule that there is always personal jurisdiction in a defamation case when the plaintiff is known to reside (at least in part) in the forum. The Petition should be denied because there is no basis for such a rule in this Court's precedent, or in the decisions of the courts of appeals that petitioners cite.

In the decision below, the United States Court of Appeals for the Third Circuit affirmed the decision of the District Court for the Eastern District of Pennsylvania (the "District Court"), dismissing the case for lack of personal jurisdiction. Both courts held that petitioners failed to allege facts sufficient to establish personal jurisdiction pursuant to Pennsylvania's long-arm statute, which extends to the limits of the Due Process Clause of the 14th Amendment.

Bruce S. Marks and Marks, LLC, d/b/a Marks and Sokolov, LLC ("M&S"),[1] alleged that Altimo Holdings & Investments Ltd. ("Altimo") and Crown Finance Foundation ("CFF") defamed them and that jurisdiction was proper in Pennsylvania.[2] The District Court and the Third Circuit held that there was no jurisdiction in Pennsylvania. It is undisputed that there is no general jurisdiction because both Altimo and CFF are organized under foreign law, A0148, A0156,[3] and neither company has an office, owns property or conducts business in Pennsylvania, A0003.

The courts below correctly held that there is no specific jurisdiction because the statements at issue were neither made in nor expressly aimed at Pennsylvania. Petitioners alleged only that respondents made defamatory statements about them (not involving or referring to Pennsylvania) to the Norwegian company Telenor ASA ("Telenor"), to Russian journalists, and to certain persons in the United Kingdom, and that Russian-language websites unconnected to respondents subsequently

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[1] The caption on the Petition as well as that used by the Third Circuit incorrectly spells Sokolov as Solokov. Instead we use the caption used by the Complaint and the District Court.

[2] CFF, "incorrectly identified for docketing purposes as 'Alfa Group,'" *see* A0001, is lumped together with Altimo and Financial Dynamics in the complaint, but no specific allegation is made with respect to any activity of CFF. For purposes of clarity, Alfa Group is not "also known as" CFF. Alfa Group is not an entity, but is a collection of affiliated companies, which includes CFF. A0156.

[3] In this brief, "A" refers to the Joint Appendix filed with the United States Court of Appeals for the Third Circuit.

reported on respondents' statements (and, in the same article, on Telenor's rebuttals). Thus, Pennsylvania was not the "focal point" of the alleged defamation.

Petitioners premise jurisdiction on their assertions that (i) respondents' statements were intended to harm petitioners, who reside and do business in Pennsylvania (and in Russia and Ukraine), and (ii) reports of the statements were accessible (albeit through Russian-language websites unconnected to respondents) in Pennsylvania (and worldwide) on the Internet. Under this Court's decision in *Calder v. Jones*, 465 U.S. 783 (1984), however, those allegations are insufficient to give rise to personal jurisdiction in a forum with which the defendant has no connection.

Calder involved a libel action in which this Court was asked to resolve whether a court in California could constitutionally exercise jurisdiction over two journalists based on the "effects" of their Florida conduct in California. *Id.* at 789. The plaintiff, Shirley Jones, was a resident of California who sued in California state court. *Id.* at 784-85. The defendants were each based in Florida. *Id.* at 785-86. In finding jurisdiction over the individual defendants appropriate, this Court relied on four facts: (1) that the article written and published by the defendants "concerned the California activities of a California resident"; (2) that the article "was drawn from California sources"; (3) that the "brunt of the harm" to Jones' reputation occurred in California; and (4) that "the National Enquirer [the publication in which the article appeared] has its largest circulation" in California. *Id.* at 788-90. In sum, this

Court held that "California is the focal point both of the story and of the harm suffered." *Id.* at 789.

A key element of *Calder* is that the allegedly wrongful conduct be "expressly aimed" at the forum, not just the plaintiff. *Id.* at 790, 789 (noting that the alleged tortious conduct was "expressly aimed at *California*" (emphasis added)); *see also id.* at 788 ("In judging minimum contacts, a court properly focuses on 'the relationship among the defendant, *the forum*, and the litigation.'" (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977)) (emphasis added)). In *Calder*, the Court determined that the alleged defamation was "expressly aimed" at California based on several distinctive facts: the publication for which the allegedly defamatory statements were written, the National Inquirer, had "its largest circulation" in California, *id.* at 789-90; "[t]he allegedly libelous story concerned the California activities of a California resident," *id.* at 788; the story "impugned the professionalism of an entertainer whose television career was centered in California," *id.*; and "[t]he article was drawn from California sources," *id.*

There is no corresponding nexus to Pennsylvania in this case. Here, the publication by respondents of the allegedly defamatory statements was in Norway, Russia and the United Kingdom, and the ensuing publication by Russian-language websites was unconnected to respondents; the statements at issue concerned activities in Russia, Norway and Ukraine; petitioners' professional interests, as an international law practice, focus on disputes arising in Russia and Ukraine; and there is no mention of Pennsylvania, and no suggestion that

Pennsylvania sources were used, in any of the statements at issue.

The decision below denying jurisdiction is consistent with *Calder*, and with the courts of appeals decisions following *Calder* that petitioners cite. The petition should, therefore, be denied.

Statement of the Case

A. Factual Background

Petitioner Marks is a resident of Pennsylvania, and he is the sole partner in petitioner Marks, LLC, a Philadelphia law firm with seven attorneys. Together with MS Ltd., a Moscow, Russia law firm with six attorneys, and MSB, Ltd, which maintains an office in Kiev, Ukraine with three attorneys, Marks, LLC does business as M&S. App. 9a; A0002, A0162-64, A0212. M&S describes itself as a "US–Russian law firm," A0167, and petitioners' website does not distinguish among the three offices and holds each out to be an office of M&S. A0162-164, A0166-170. As petitioners' website explains, "the lawyers of Marks & Sokolov function as an integrated team." A0162. M&S's practice focuses in part on "representing persons harmed by fraud or corruption in Russia or Ukraine by finding means to bring their claims in the United States." App. 9a; A0041 (Complaint ("Cpl.") ¶ 20.).

This case involves a single allegation of tortious conduct arising from a press release, accompanied by a letter, a supporting memorandum, and several attachments (together, the "Releases"). Petitioners allege that Altimo issued the Releases; it addressed

the letter to the Chairman of the Board of Telenor; and it provided copies of the Releases to Financial Dynamics Ltd. ("FD") (Altimo's public relations advisor),[4] and to eight Russian journalists in Russia. A0043 (Cpl. ¶¶ 29-30), A0176. Petitioners do not allege that the Releases were circulated in Pennsylvania or accessible to Pennsylvania residents.

Soon after Altimo issued the Releases, three Russian Internet sites, which are not connected to respondents, posted identical articles (the "Articles"), written in Russian, discussing "[t]he conflict between Altimo and Telenor . . . regarding [a] business in Ukraine" and efforts by each company to influence Russian and United Kingdom media. A0048 (Cpl. ¶ 56); A0123-37 (Cpl. Ex. D, Translation). The Articles, which are the only basis for linking the defamation claim to Pennsylvania, do not mention Pennsylvania, and they describe (with a rebuttal from Telenor) only one statement made by Altimo that relates to petitioners (naming only the international law practice, M&S, not Marks):

> "Altimo confirms that in March of 2008 the law firm of Marks and Sokolov at Telenor's request initiated a number of publications in Russian mass media concerning the death of one of the founders of a mobile

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[4] FD provided these documents to a member of the legal department at the Financial Times of London, subject to a non-disclosure agreement. FD did not disclose or provide the Releases to anyone else, and there is no evidence that the Financial Times further disseminated the Releases. A0180.

> operator Megafon, Leonid Rozheckin who disappeared in March of 2008 and possible Alfa Group's [sic] involvement in this matter."

A0125, A0130, A0135 (Cpl. Ex. D, Translation). This sentence, found in the three Russian-language, Russian website Articles, is the only allegedly defamatory statement petitioners claim was accessible to Pennsylvania residents. A0048 (Cpl. ¶¶ 56-58), A0051 (Cpl. ¶ 69). Petitioners characterize this one statement in Russian on the Internet as a "world-wide media campaign" to defame them, in retaliation for petitioners' representation of Telenor, a Norwegian company, in a case filed seven years earlier in the Southern District of New York "over Russian and Ukrainian telecommunications assets." A0038 (Cpl. ¶ 4), A0039 (Cpl. ¶10), A0046 (Cpl. ¶ 48); Pet. at 2-3.

There is no allegation that anyone in Pennsylvania, other than petitioners, accessed the Releases or the Articles. There is no allegation that the Releases or the Articles referenced Pennsylvania or any Pennsylvania-related activity. There is no allegation that respondents in authoring the Releases, or the Russian-language websites unconnected to respondents in posting the Articles on the Internet, relied on any source in Pennsylvania. There is no allegation that the Releases or the Articles were circulated among any Pennsylvania media or reproduced in any form by a Pennsylvania publication. Petitioners have even conceded that the Articles were aimed at "Russian readers." (Brief for Plaintiffs-Appellants at 9, 10

n.2., *Marks v. Alfa Group*, No. 09-2964 (3rd Cir. Mar. 12, 2010).)

Therefore, petitioners' case turns on whether allegedly defamatory statements made by foreigners to foreigners regarding disputes and conduct focused on Russia, Norway and Ukraine are subject to jurisdiction in Pennsylvania solely because (i) the plaintiff is known to reside and do business in part in Pennsylvania, and (ii) the statements were subsequently described by Russian-language websites unconnected to respondents that were accessible in Pennsylvania. A0048 (Cpl. ¶ 58).

B. The Proceedings Below

1. The District Court's Decision

The District Court was required to accept, and did accept, petitioners' allegations. App. 20a. In dismissing this case, the District Court accepted allegations that respondents distributed defamatory materials to "media worldwide"; that respondents were aware of petitioners' offices in Pennsylvania, Russia and Ukraine; that petitioners had a "substantial client base in Russia"; and that petitioners "may lose business and potential business opportunities" in Pennsylvania as a result of the defamatory statements. App. 20a.

The District Court concluded that these allegations were insufficient to give rise to personal jurisdiction over respondents in Pennsylvania. App. 22a-23a. Relying on the principles set forth by this Court in *Calder*, the District Court explained the

three crucial elements that gave rise to jurisdiction over the out-of-state resident in that case:

> "(1) the defendant committed an intentional tort;
>
> (2) the plaintiff felt the brunt of the harm in the forum such that the forum can be said to be the focal point of the harm suffered by the plaintiff as a result of that tort; and
>
> (3) the defendant expressly aimed his tortious conduct at the forum such that the forum can be said to be the focal point of the tortious activity."

App. 16a-17a (*citing IMO Indus., Inc. v. Kiekert AG*, 155 F.3d 254, 265-66 (3d Cir. 1998)).

The District Court found that petitioners had failed to satisfy the third of these prongs, holding that petitioners failed to "include[] any . . . suitably precise allegations in their complaint which demonstrate that defendants expressly aimed their conduct at Pennsylvania." App. 23a. If anything, the court observed, the allegations in the complaint showed that respondents' statements "were directed . . . to a global audience," as opposed to an audience in Pennsylvania, or even the United States. App. 21a. The court also recognized an additional circumstance tending to negate jurisdiction: the fact that the sole form in which the alleged defamatory statements were alleged to have reached Pennsylvania was via "Russian media websites which again did not mention Pennsylvania" and

which "were written in the Russian language using the Cyrillic alphabet." App. 21a.[5] The District Court observed that petitioners' allegation that respondents intended "to achieve publication in Russian speaking media accessible to Pennsylvania and the world in order to destroy Plaintiffs' Pennsylvania based practice which relates to Russia and Ukraine" was conclusory, lacking any specific basis for inferring "a 'deliberate targeting' of plaintiffs' Pennsylvania office as opposed to their law offices in Russia and Ukraine." App. 22a-23a. Such allegations, the District Court held, were not sufficient to show respondents "expressly aimed" their tortious conduct at Pennsylvania, "a forum some 4,700 miles away" from where the Articles were posted on the Internet. App. 23a.

2. The Third Circuit's Decision

Petitioners appealed this dismissal to the Third Circuit. In a brief unpublished decision, the Third Circuit applied *Calder* and affirmed the District

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[5] As the District Court concluded, even had respondents been responsible for posting the Russian-language Articles on the Internet, which they were not, this would not demonstrate that respondents expressly aimed their conduct at Pennsylvania. App. 21a ("[W]hen a publication is written entirely in a foreign language, it weighs heavily against a finding that the author intended to aim that content at an American audience") (*citing Toys "R" Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 454 (3d Cir. 2003) (finding, in a trademark infringement case, that defendant's websites were not designed or intended to reach customers in New Jersey, since, *inter alia*, websites were entirely in Spanish), and *Noonan v. Winston Co.*, 135 F.3d 85, 91 (1st Cir. 1998) (noting that an allegedly defamatory advertisement with French text and a French phone number suggests it was created for a French audience).

Court's ruling, observing that petitioners did not allege that respondents made any effort to circulate their statement in Pennsylvania; that the statement did not specifically reference petitioners' practice of law in Pennsylvania; and that the Articles "were published only by Russian news organizations in the Russian language." App. 6a. In sum, the Third Circuit noted, petitioners' allegations supplied no basis "for a finding that defendants 'expressly aimed' their conduct at the forum." App. 6a. Consequently, the Third Circuit affirmed the District Court's dismissal. The Third Circuit denied petitioners' request for a rehearing en banc. App. 25a-26a.

Reasons for Denying the Petition

I. The Decision Below Followed and Correctly Applied *Calder*

The dismissal of petitioners' defamation action (and the Third Circuit authority upon which it was based) was consistent with and correctly followed this Court's decision in *Calder*. For this reason, this Court should deny the petition.

This case involves nothing more than a straightforward application of *Calder*, and, therefore, does not warrant this Court's review. That the Articles were available on the Internet instead of a more traditional publication has no bearing on the legal question petitioners seek to present, Pet. at ii, and does nothing to alter the long-standing principles that this Court has set forth governing when jurisdiction may be exercised over a foreign defendant.

Here, the Third Circuit correctly affirmed dismissal, following *Calder*, given the following key facts: (1) petitioners "[did] not allege that defendants attempted to have their news release published in Pennsylvania"; (2) "[n]either the news release nor the articles it spawned refer to Pennsylvania or [petitioners'] practice [of law] there"; and (3) petitioners have not alleged that respondents "distributed their news release to specific media organizations based in Pennsylvania." App. 5a-6a.

Petitioners contend that respondents intended to "achieve publication in Russian speaking media accessible to Pennsylvania and the world." A0048 (Cpl. ¶ 57). However, petitioners do not allege that respondents did anything to target a Pennsylvania audience; indeed, their allegations point to specific audiences—in Russia, Norway and Ukraine, and Russian speakers—that have no connection with Pennsylvania. Publication via "three . . . Russian language media websites" (A0048 (Cpl. ¶ 56), A0123-137 (Cpl. Ex. D)) is not conduct "expressly aimed" at Pennsylvania.

Even assuming that a description of Altimo's allegations, without endorsing them, by Russian websites—the sole means by which the allegations were accessible in Pennsylvania—was respondents' intent, such Russian language publication does not indicate an intent to target a Pennsylvania audience. Nor can "express aiming" at Pennsylvania be inferred from the content of the Articles, which related to events occurring in Russia, Norway and Ukraine. Nor do petitioners allege that anyone in Pennsylvania other than their own agents accessed the Articles.

In sum, all the indicia on which this Court relied in *Calder* to find that defamatory statements were aimed at California point away from Pennsylvania in this case. The decision below denying jurisdiction is, therefore, correct, and consistent with *Calder*. Thus, as the District Court found, none of petitioners' allegations is sufficient to establish that respondents "expressly aimed" their conduct at Pennsylvania, as was a critical fact in *Calder*.

II. There Is No Circuit Split That Warrants This Court's Review

When presented with the facts of this case, all Circuits would have resolved this case under their existing law in the same way as the Third Circuit. As a result, this case does not implicate a circuit split meriting this Court's review.

A. First Circuit

Petitioners' reliance on the First Circuit's decision in *Northern Laminate Sales, Inc. v. Davis*, 403 F.3d 14 (1st Cir. 2005), is misplaced. In that case, the alleged tortfeasor sent a bad check and other mail directly into the forum in which the plaintiff sought to subject him to specific jurisdiction. *Id.* at 19-20. As a result, jurisdiction was proper not just because the plaintiff suffered injury in the proposed forum, but because of defendant's direct and deliberate contacts with it. *Id.* at 25-26. The same cannot be said here as respondents had no contact with Pennsylvania or petitioners in the course of circulating their statement.

B. Fourth Circuit

Petitioners' reliance on the Fourth Circuit's holding in *First American First, Inc. v. National Association of Bank Women*, 802 F.2d 1511 (4th Cir. 1986), is also misplaced. In *First American First*, plaintiff alleged that defendant circulated letters both inside and outside plaintiff's home state, with the intent of "inflict[ing] the greatest injury upon [plaintiff] in the state in which he resided and conducted his business." *Id.* at 1517. Thus, jurisdiction in *First American First* was premised at least in part on direct and deliberate contacts with the forum. *Id.*

Petitioners' allegations also differ considerably from those made in *First American First*, because the plaintiff corporation in that case was organized under the laws of Virginia, the proposed forum, and its only office was located in Virginia. *Id.* Therefore the Fourth Circuit's conclusion that defendant's call for a boycott was inevitably aimed at and intended to cause injury in Virginia, *see id.*, is far more compelling than petitioners' allegations with respect to Pennsylvania. Because petitioners have offices in Pennsylvania, Russia and Ukraine, because petitioners allege that respondents intended to harm petitioners' "practice which relates to Russia and Ukraine," A0048 (Cpl. ¶¶ 57-58), and because respondents' statements concerned disputes focused in Russia, Norway and Ukraine, there is no basis here to infer that the target of respondents' conduct was Pennsylvania as opposed to Russia or Ukraine. That respondents' statements only reached Pennsylvania via Articles posted on Russian-language websites unconnected to respondents

further indicates that Pennsylvania was not the focal point of respondents' conduct.

Other decisions from the Fourth Circuit, including the Internet-related case of *Young v. New Haven Advocate*, 315 F.3d 256 (4th Cir. 2002), *cert. denied*, 538 U.S. 1035 (2003), confirm that the Fourth Circuit's interpretation of the law is consistent with that of the Third Circuit. In *Young*, the Fourth Circuit held that a court in Virginia lacked jurisdiction over a Connecticut newspaper that published articles about the plaintiff, who was a warden of a Virginia prison. *See id.* at 258-59. The defamation action in *Young* involved the publication of articles in Connecticut that were also published on the Internet and accessible to residents of Virginia. *See id.* at 259-60. The Fourth Circuit held that publication on the Internet "did not manifest an intent to aim their websites or the posted articles at a Virginia audience", and that the lawsuit should have been dismissed for a lack of personal jurisdiction. *Id.* at 258-59. Nothing has happened since this Court's denial of certiorari in *Young* to warrant taking this case.

C. Seventh Circuit

Petitioners quote broad language from *Janmark, Inc. v. Reidy*, 132 F.3d 1200 (7th Cir. 1997), a copyright case. *Janmark* makes clear, however, that in order to sustain specific jurisdiction, at a minimum the forum must be the focal point of the plaintiff's injury. *See id.* at 1202-1203. Petitioners' allegations that Pennsylvania residents may have accessed the Articles, because they were "accessible on the Internet worldwide," A0051 (Compl. ¶ 69),

and that petitioners "may lose business and potential business opportunities" in Pennsylvania, A0051 (Cpl. ¶ 74), are insufficient to establish that Pennsylvania was, or was intended by respondents to be, the focal point of petitioners' alleged injuries, particularly in light of the facts that the Articles were written in Russian and available only on Russian websites. A0123-0137 (Cpl. Ex. D, Translation). Plainly, if petitioners were injured by defamation – if their reputation were harmed – that injury occurred primarily where people had access to and could read respondents' statements: in Russia and other predominantly Russian-speaking areas.

Moreover, since *Janmark* was decided, the Seventh Circuit has called into question the potentially broad implications of the decision. In *Tamburo v. Dworkin*, 601 F.3d 693 (7th Cir. 2010), *petition for cert. filed*, 10 U.S.L.W. 146 (U.S. July 7, 2010) (No. 10-61), the Seventh Circuit observed that the *Janmark* decision is difficult to reconcile with the Circuit's earlier decisions, such as *Wallace v. Herron*, 778 F.2d 391 (7th Cir. 1985), *cert. denied*, 475 U.S. 1122 (1986), insofar as "*Janmark* is understood as broadly authorizing personal jurisdiction wherever a tort victim is injured." *Tamburo*, 601 F.3d at 705. In upholding jurisdiction, *Tamburo* gave less emphasis to *Janmark*'s "broad language about *Calder*" and instead focused on the point that *Janmark* "ultimately considered the relationship between the allegedly tortious conduct and the forum state itself" in reaching its conclusion. *Id.* at 706.

Tamburo involved not just an allegation that defamatory material was posted on the Internet, but also that the defendant sent blast emails reciting the

plaintiffs' address in Illinois and urging readers to boycott plaintiffs' Illinois business. *Id.* at 697. Thus, this Court's decision on the pending petition for certiorari in *Tamburo* should have no bearing on this case. Tellingly, the Seventh Circuit has approvingly cited the Fourth Circuit's decision in *Young*, 315 F.3d 256, and has observed that "[i]n a case involving a stand-alone Internet-based defamation, *Calder* might require a showing that the defendant intended to reach forum-state readers." 601 F.3d at 707 n.10.

D. Eighth Circuit

In *Dakota Industries, Inc. v. Dakota Sportswear, Inc.*, 946 F.2d 1384 (8th Cir. 1991), the court's finding of specific jurisdiction was supported by defendant's direct and calculated contacts with the forum. *See id.* at 1391. By comparison, the tortious conduct alleged in this case did not involve any deliberate contact with Pennsylvania.

Moreover, other Eighth Circuit authority, not cited by petitioners, confirms that there is no split between the Third and Eighth Circuits. In *Hicklin Engineering, Inc. v. Aidco, Inc.*, 959 F.2d 738, 739 (8th Cir. 1992), for example, the Eighth Circuit denied jurisdiction:

> "Assuming [plaintiff's] allegations to be true, [defendant] sent correspondence containing defamatory statements to several of [plaintiff's] customers and interfered with its business. None of the correspondence, however, was published in Iowa [the

> proposed forum]. Nor can we say that [defendant's] actions were targeted to have an effect in Iowa."

E. Ninth Circuit

Petitioners cite two Ninth Circuit trademark cases: *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316 (1998), and *Bancroft & Masters, Inc. v. Augusta National Inc.*, 223 F.3d 1082 (2000). Neither addresses the application of *Calder* in the defamation context, and both cases recognize that *Calder* "cannot stand for the broad proposition that a foreign act with foreseeable effects in the forum state always gives rise to specific jurisdiction." *Bancroft*, 223 F.3d at 1087; *see also Panavision*, 141 F.3d at 1322.

Consistent with the decision below, *Bancroft* recognized that *Calder* requires "something more": "what the Supreme Court described as 'express aiming' at the forum state." 223 F.3d at 1087 (quoting *Calder*, 465 U.S. at 789); *accord Panavision*, 141 F.3d at 1322. *Bancroft* and *Panavision* thus proceeded from the same doctrinal starting point as the Third Circuit in this case and the other Circuits.

In applying the requirement of "something more" in the trademark context, *Bancroft* stated broadly that it is satisfied "when the defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the defendant knows to be a resident of the forum state." 223 F.3d at 1087; *see also Panavision*, 141 F.3d at 1322. That broad statement in the context of trademark cases must, however, be viewed in light of facts emphasized in

the Ninth Circuit's opinions that contrast starkly with the present case. Both *Bancroft* and *Panavision* involved California plaintiffs whose activities, business interests and clientele were heavily focused in California,[6] in contrast to M&S's international law practice focused on Russia- and Ukraine-based disputes.

The broader statements in *Bancroft* and *Panavision* are also of doubtful authority even in the Ninth Circuit, at least insofar as petitioners seek to extend them beyond the trademark context. More recent Ninth Circuit authority clarifies that, even in cases of "individualized targeting," the focus of the analysis is whether the conduct was "expressly aimed" at the forum. For example, in *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797 (9th Cir. 2004), the Ninth Circuit held that an Ohio car dealership had not "'expressly aimed' its intentional act [the placement of an advertisement in a locally-circulated Ohio newspaper that included a photograph of Arnold Schwarzenegger without his permission] . . . at California," *id.* at 806, despite the facts that defendant may have harmed Schwarzenegger in California and that defendant may have known that Schwarzenegger lived in California, *id.* at 807. Given that the "purpose of the

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[6] *See Panavision*, 141 F.3d at 1322 (finding that defendant had "directed his activity toward the forum state" because "[h]is conduct . . . had the effect of injuring Panavision in California where Panavision has its principal place of business and where the movie and television industry is centered"); *see also Bancroft*, 223 F.3d at 1088 (holding that defendant's letter "was expressly aimed at California because it individually targeted . . . a California corporation doing business almost exclusively in California").

[a]dvertisement was to entice Ohioans to buy or lease cars from [the dealership]"; "the [a]dvertisement was never circulated in California"; "and [the dealership] had no reason to believe that any Californians would see it," the Ninth Circuit found that defendant's act "was expressly aimed at Ohio rather than California". *Id.* Similarly, here, the facts demonstrate that any "express aim" would be at Russia, rather than Pennsylvania.

F. Tenth Circuit

Petitioners cite *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063 (10th Cir. 2008), in which the Tenth Circuit found that there was jurisdiction in Colorado over an action alleging that the defendants filed a complaint in California with eBay to disrupt a Colorado plaintiff's Internet auction. *See id.* at 1067-68. However, the District Court explained why this case is inapposite: unlike in the case at bar, in which petitioners' Russian and Ukrainian offices and the Russian language of the Articles play a large role, "[t]he sole effect of the action taken by the *Dudnikov* defendants in California was to interfere with the plaintiff's auction in Colorado." App. 22a.

The absence of a circuit split is further evident from the fact that *Dudnikov* cites the Third Circuit's application of *Calder* with approval. 514 F.3d at 1074 n.9 (*citing Remick v. Manfredy*, 238 F.3d 248, 259-60 (3d Cir. 2001)); *see Remick*, 238 F.3d at 259 ("Given that the website was intended to provide information on [plaintiff] and that it was accessible worldwide, there is no basis to conclude that the defendants expressly aimed their allegedly tortious

activity at Pennsylvania knowing that harm was likely to be caused there").

G. Eleventh Circuit

Petitioners contend that the Eleventh Circuit's decision in *Licciardello v. Lovelady*, 544 F.3d 1280 (11th Cir. 2008), conflicts with the decision below. Pet. at 16. This is incorrect because *Lovelady* concerned a trademark violation, not defamation, and is therefore distinguishable. In finding jurisdiction to be proper, the Eleventh Circuit explained that the alleged tort was "expressly aimed at a specific individual in the forum whose effects were suffered in the forum." *Id.* at 1288. Thus, the court held that "[t]he Constitution is not offended by the exercise of Florida's long-arm statute to effect personal jurisdiction over Lovelady because his intentional conduct in his state of residence was calculated to cause injury to Carman in Florida." *Id.* at 1288. Here, respondents' conduct was not calculated to cause injury to petitioners in Pennsylvania. To the extent that the Articles posted by others on a website could be said to be the result of a calculation to cause petitioners injury, that injury was to be caused in Russia, as evidenced by the facts that the Articles were written in Russian and available only on Russian websites.

Conclusion

For the foregoing reasons, the Petition should be denied.

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Respectfully submitted,

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